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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 LISETH AGUIRRE, on behalf of  
11 herself and others similarly situated,

12 v. Plaintiff,

13 14 MONARCH HEALTHCARE, A  
MEDICAL GROUP, INC.,

15 16 Defendant.

17 Case No.: 5:25-cv-01161-JGB-SP

18 **PLAINTIFF'S RESPONSE IN**  
**OPPOSITION TO DEFENDANT'S**  
**MOTION TO DISMISS**  
**PLAINTIFF'S AMENDED**  
**COMPLAINT**

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## Introduction

Monarch Healthcare, A Medical Group, Inc. (“Defendant”)<sup>1</sup> moves under Rule 12(b)(6) to dismiss Liseth Aguirre’s claims against it—arguing that the “emergency purposes” exception to the Telephone Consumer Protection Act (“TCPA”) should be construed so broadly as to exempt calls it says were placed to confirm a doctor’s request for approval of medical treatment. This Court should deny Defendant’s motion for at least three independent reasons.

First, because Defendant was attempting to reach two persons who Ms. Aguirre does not know, Defendant’s calls necessarily did not relate to a medical situation *as to Ms. Aguirre*—let alone an emergency as to her. Given as much, under Ninth Circuit precedent, and in line with commentary from the Federal Communications Commission (“FCC”), the “emergency purposes” exception cannot apply to Defendant’s robocalls.

Second, Defendant’s arguments stretch far beyond Ms. Aguirre’s allegations, as Defendant’s stated reasons for its calls are not found in Ms. Aguirre’s Amended Complaint. Because Ms. Aguirre provides detailed factual support for her allegations that the calls were not placed for “emergency purposes,” Defendant’s defense fails at this early stage.

Finally, the FCC has already found that *urgent, but non-emergency* healthcare-related calls are not covered by the “emergency purposes” exception. And the unambiguous language Congress used in exempting calls made for “emergency purposes” makes clear that the purpose of the call must be to address a sudden or unforeseen situation that requires immediate action. Nothing in the content of the prerecorded voice messages that Ms. Aguirre received from Defendant indicates that Defendant placed its calls for such a purpose.

<sup>1</sup> Ms. Aguirre amended her complaint on July 17, 2025 to substitute Monarch Healthcare, A Medical Group, Inc. for Optum Health Plan of California as the correct defendant. See ECF Nos. 25, 29.

1 For these and the other reasons set forth more fully below, this Court  
2 should deny Defendant's motion to dismiss, ECF No. 28, in its entirety.

3 **Factual Background**

4 In or around March 2024, Cotiviti, Inc. ("Cotiviti"), at the direction and  
5 on behalf of Defendant, began placing calls to Ms. Aguirre's cellular telephone  
6 number. Amended Complaint, ECF No. 25, at ¶¶ 9, 23. Specifically, Cotiviti  
7 placed calls to Ms. Aguirre's cellular telephone number on at least March 11,  
8 2024 (2 calls), March 12, 2024, July 31, 2024 (2 calls), August 1, 2024 and  
9 August 6, 2024. *Id.* at ¶¶ 12-18.

10 In connection with each of those calls, Cotiviti, on behalf of Defendant,  
11 delivered a prerecorded voice message. *Id.* Two of the six messages Cotiviti  
12 delivered referred to a request from a "doctor," while the remaining four  
13 messages contained no obvious health-related content. *Id.* All requested a call  
14 back at "any time," noting that Defendant could be reached any day of the week.  
15 *Id.*

16 Defendant directed Cotiviti to place its calls to Ms. Aguirre's cellular  
17 telephone number intending to reach James Duran or Jonathan Duran. *Id.*; *see*  
18 *also id.* at ¶ 22. Ms. Aguirre, however, does not know James Duran or Jonathan  
19 Duran. *Id.* at ¶¶ 28-29. And Ms. Aguirre never gave consent to Defendant to call  
20 her cellular telephone number to reach James Duran or Jonathan Duran. *Id.* at ¶  
21 34.

22 As well, Ms. Aguirre has never had an insurance plan or account with  
23 Defendant and has never been a customer of Defendant. *Id.* at ¶¶ 30-31. She did  
24 not provide her cellular telephone number to Defendant. *Id.* at ¶ 32. And Ms.  
25 Aguirre did not provide Defendant with consent to place calls, in connection  
26 with which Defendant used an artificial or prerecorded voice, to her cellular  
27 telephone number. *Id.* at ¶ 33.

28

## Legal Standard

“The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6).” *Matthews v. Mid City Cannabis Club, Inc.*, No. CV 20-07841 PA (JPRx), 2021 WL 1567496, at \*2 (C.D. Cal. Mar. 2, 2021) (Anderson, M.J.).<sup>2</sup> Indeed, as the Ninth Circuit noted, “[t]he Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.” *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997).

While the Federal Rules allow a court to dismiss a cause of action for “failure to state a claim upon which relief can be granted,” they also require all pleadings to be “construed so as to do justice.” *Matthews*, 2021 WL 1567496, at \*2. The purpose of Rule 8(a)(2) is to “give the defendant fair notice of what the ... claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In assessing a Rule 12(b)(6) motion to dismiss, the court “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

## The Telephone Consumer Protection Act

As the Supreme Court noted:

Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back.

*Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335, 2343 (2020). To that end, the TCPA prohibits, absent prior express consent, calls made to cellular

<sup>2</sup> Internal citations, quotations, and footnotes are omitted unless otherwise noted.

1 telephones using “an artificial or prerecorded voice,” but excludes calls “made  
2 for emergency purposes[.]” 47 U.S.C. § 227(b)(1)(A).

3 “Congress was clear in enacting the TCPA that consumers should be  
4 protected from unwanted robocalls.” In re Rules and Regulations Implementing  
5 the Tel. Consumer Prot. Act of 1991, 35 FCC Rcd. 5953, at ¶ 8 (2020) (the  
6 “Anthem Order”). As a result, “[t]he TCPA is essentially a strict liability  
7 statute.” *Alea London Ltd. v. Am. Home Servs., Inc.*, 638 F.3d 768, 776 (11th  
8 Cir. 2011).

9 Though the TCPA excludes any call “made for emergency purposes,” the  
10 TCPA does not define the term “emergency purposes.” 47 U.S.C. §  
11 227(b)(1)(A). Congress did task the FCC with promulgating regulations  
12 implementing the statute. *See* 47 U.S.C. § 227(b)(2) (“The Commission shall  
13 prescribe regulations to implement the requirements of this subsection.”).

14 And the FCC has defined the term “emergency purposes” to mean “calls  
15 made necessary in any situation affecting the health and safety of consumers[.]”  
16 47 C.F.R. § 64.1200(f)(4). But the FCC later made clear that the exception is  
17 intended for “*instances that pose significant risks to public health and safety*,  
18 and where the use of prerecorded message calls could speed the dissemination of  
19 information regarding ... potentially hazardous conditions to the public.” In re  
20 Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, 35  
21 FCC Rcd. 2840, 2841 at ¶ 4 (2020) (emphasis added).

22 **Argument**

23 **I. Prerecorded messages that Defendant delivered to Ms.  
24 Aguirre’s cellular telephone intended for someone other than  
25 Ms. Aguirre do not fall within the TCPA’s “emergency  
26 purposes” exception.**

27 Defendant contends that the sole focus of the “emergency purposes”  
28 inquiry is “the *caller’s* purpose, not the *recipient’s* circumstances.” ECF No. 28-  
1 at 14:20-23 (emphasis in original). As a result, Defendant asserts that it is

1 irrelevant to the “emergency purposes” inquiry that Defendant’s calls reached  
2 Ms. Aguirre instead of its purported enrollees, James Duran and Jonathan  
3 Duran. *Id.* Not so.

4 In *Duguid v. Facebook, Inc.*, the plaintiff alleged that Facebook sent  
5 unsolicited text messages to him as a security precaution to alert him when his  
6 account was accessed from an unrecognized device or browser. 926 F.3d 1146,  
7 1149 (9th Cir. 2019), *rev’d on other grounds, Facebook, Inc. v. Duguid*, 141 S.  
8 Ct. 1163 (2021). There was one problem—the plaintiff did not have a Facebook  
9 account and had never consented to receiving the messages. *Id.*

10 Facebook argued that the text messages were made for “emergency  
11 purposes.” *Id.* at 1152. But the Ninth Circuit gave short shrift to that argument:  
12 “Duguid did not have a Facebook account, so his account could not have faced a  
13 security issue, and Facebook’s messages fall outside even the broad construction  
14 the FCC has afforded the emergency exception.” *Id.*; *see also* In re Rules &  
15 Regulations Implementing the Tel. Consumer Prot. Act of 1991, 31 FCC Rcd.  
16 9054, 9063 ¶ 21 n.76 (Aug. 4, 2016) (“2016 Order”) (“We emphasize that our  
17 finding will not promote the proliferation of unwanted robocalls from any third  
18 party to any person under the auspices of an emergency. First, purported  
19 emergency calls cannot be targeted to just any person. These calls must be about  
20 a bona fide emergency that is relevant to the *called party*.”) (emphasis added).

21 Significant then, is that a “called party” under the TCPA is “the person  
22 subscribing to the called number at the time the call is made.” *Soppet v.*  
23 *Enhanced Recovery Co., LLC*, 679 F.3d 637, 643 (7th Cir. 2012). The term  
24 “called party” does not mean “intended recipient,” even where the caller reaches  
25 a wrong number. *See Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242 (11th  
26 Cir. 2014) (“the term ‘called party’ does not mean ‘intended recipient’”); *see*  
27 *also Lemos v. Credit One Bank, N.A.*, 960 F.3d 1164, 1167 (9th Cir. 2020)  
28 (adopting the approach of the Seventh and Eleventh Circuits and noting that they

1 “have . . . both rejected [the] ‘intended recipient’ interpretation” of a “called  
2 party” as defined by the TCPA).

3 Here, prerecorded voice messages that Defendant caused to be delivered  
4 to Ms. Aguirre’s cellular telephone were intended for someone other than her,  
5 and she had no relationship with Defendant and did not provide Defendant  
6 consent to call her. *See* ECF No. 25 at ¶¶ 26-34. Accordingly, the prerecorded  
7 voice messages that Defendant caused to be delivered to Ms. Aguirre’s cellular  
8 telephone were not, and simply could not have been, “about a *bona*  
9 *fide* emergency that is relevant to the called party [Ms. Aguirre].” 2016 Order at  
10 9062 n.76.

11 Ms. Aguirre recognizes that some courts have found that prerecorded  
12 voice messages directed to wrong or reassigned cellular telephone numbers can  
13 fall within the TCPA’s “emergency purposes” exception, *see, e.g.*, *Roberts v.*  
14 *Medco Health Sols., Inc.*, No. 4:15 CV 1368 CDP, 2016 WL 3997071, at \*1-3  
15 (E.D. Mo. July 26, 2016); *Lindenbaum v. CVS Health Corp.*, No. 1:17-CV-1863,  
16 2018 WL 501307, at \*3 (N.D. Ohio Jan. 22, 2018), and that other courts have  
17 called attention to but refused to weigh in on the issue. *See, e.g.*, *Dennis v.*  
18 *Amerigroup Wash., Inc.*, No. 3:19-CV-05165-RBL, 2020 WL 618472, at \*6  
19 (W.D. Wash. Feb. 10, 2020), *amended on denial of reconsideration*, No. 3:19-  
20 CV-05165-RBL, 2020 WL 996856 (W.D. Wash. Mar. 2, 2020).<sup>3</sup> None of these  
21 courts, however, provided an explanation as to how applying the TCPA’s  
22 “emergency purposes” exception to calls made to wrong or reassigned telephone  
23 number can be reconciled with the FCC’s clear and unambiguous statement that  
24 calls to which the “emergency purposes” exception applies “must be about  
25 a *bona fide* emergency that is relevant to the called party.” 2016 Order at 9062  
26 n.76; *accord* *Clair v. CVS Pharm., Inc.*, 222 F. Supp. 3d 779, 781 (N.D. Cal.  
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28 <sup>3</sup> *Roberts* and *Dennis* were decided on summary judgment, not at the  
pleadings stage. Defendant’s reliance on those opinions is therefore misplaced.

1 2016) (“Assuming, for argument’s sake only, that Roberts was correctly  
2 decided, it does not stand for the proposition that all prescription-related calls  
3 are categorically made for emergency purposes...CVS’s argument stands for the  
4 proposition that pharmacies are totally immune from liability for  
5 making automated calls about prescriptions, no matter how often the calls are  
6 made and no matter how many times the customer asks for them to stop. This  
7 defies common sense.”).

8 And while the court in *Dennis* came closest to doing so—by referencing  
9 the FCC’s statement that it “encourage[s] educational organizations to regularly  
10 update their emergency calling lists to ensure that emergency-purpose calls do in  
11 fact reach the parent or guardian of each affected student and are not received by  
12 consumers with no connection to the school,” and correspondingly reasoning  
13 that “[t]his suggests that even wrong-number calls can qualify for the  
14 exemption,” 2020 WL 618472, at \*6—it failed to clarify how the FCC’s  
15 encouragement to educational organizations could override its explicit  
16 declaration that calls to which the “emergency purposes” exception applied  
17 “must be about a *bona fide* emergency that is relevant to the called party.” 2016  
18 Order, 31 F.C.C. Rcd. at 9062 n.76.

19 In any event, *Duguid* controls here. Because Defendant’s calls did not  
20 concern Ms. Aguirre, its purported “emergency purposes” defense fails.

21 **II. Defendant’s “emergency purposes” defense is not established  
22 through the allegations in the Amended Complaint.**

23 **A. Ms. Aguirre alleges with factual support that Defendant’s  
24 calls were not placed for “emergency purposes.”**

25 Because the “emergency purposes” exception is an affirmative defense to  
26 a TCPA claim, a defendant raising the defense “bears the burden of proof.”  
27 *Kolinek v. Walgreen Co.*, No. 13 C 4806, 2014 WL 518174, at \*2 (N.D. Ill. Feb.  
28 10, 2014), vacated on other grounds on reconsideration, 2014 WL 3056813

1 (N.D. Ill. July 7, 2014). “Ordinarily, affirmative defenses … may not be raised  
2 on a motion to dismiss except when the defense raises no disputed issues of  
3 fact.” *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1194 n.6 (9th Cir. 2018); *see*  
4 *also Xechem, Inc. v. Bristol-Myers Squibb Co.*, 372 F.3d 901 (7th Cir. 2004)  
5 (“Orders under Rule 12(b)(6) are not appropriate responses to the invocation of  
6 defenses, for plaintiffs need not anticipate and attempt to plead around all  
7 potential defenses. Complaints need not contain any information about defenses  
8 and may not be dismissed for that omission.”).<sup>4</sup>

9 Dismissal based on an affirmative defense is appropriate “[o]nly when the  
10 plaintiff pleads itself out of court” by “admit[ting] all the ingredients of an  
11 impenetrable defense.” *Durnford v. MusclePharm Corp.*, 907 F.3d 595, 604 n.8  
12 (9th Cir. 2018). That is not the case here.

13 At this early stage, Defendant has not answered the Amended Complaint  
14 and, therefore, has not yet asserted an affirmative defense of “emergency  
15 purposes”—let alone provided evidence that each of its calls were placed for  
16 emergency purposes. Moreover, Ms. Aguirre pleads otherwise.

17 Indeed, Ms. Aguirre alleges that the calls were not made for “emergency  
18 purposes.” *See* ECF No. 25 at ¶ 37. She alleges that the prerecorded voice  
19 messages that Defendant left on Ms. Aguirre’s cellular telephone did not  
20 indicate to Ms. Aguirre that the calls were exigent in nature, required her  
21 immediate attention or an urgent response, or that there was any risk to Ms.  
22 Aguirre’s (or anyone else’s) health or safety. *Id.* at ¶¶ 12-18, 38, 44.

23 To the contrary, Defendant’s messages requested a call back at “any  
24 time”—hardly an insistence that its calls be returned immediately or that there  
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26 <sup>4</sup> The “proper way to seek a dismissal based on an affirmative defense  
27 under most circumstances is not to move to dismiss under Rule 12(b)(6) for  
failure to state claim,” but to “answer and then move under Rule 12(c) for  
28 judgment on the pleadings.” *Burton v. Ghosh*, 961 F.3d 960, 964–65 (7th Cir.  
2020) (collecting cases).

1 was some heightened importance. *Id.* at ¶¶ 12-18. Defendant's messages also  
2 ended with telling Ms. Aguirre to have a "good day"—not by impressing upon  
3 her any particular important or emergent situation warranting her immediate  
4 attention. *Id.*

5 While some of the prerecorded messages at issue referenced "important  
6 information" or "information about an approved authorization," there is simply  
7 no indication in any of the messages that the calls Defendant placed were  
8 "necessary" due to an emergent issue. *See, e.g., Dennis*, 2020 WL 618472, at \*3  
9 ("But there is no evidence that the intended recipient of the call to Dennis  
10 actually had a serious need for medication[.]").

11 Further, Ms. Aguirre alleges that Defendant delivered prerecorded voice  
12 messages to her cellular telephone over at least a five-month period, ECF No. 25  
13 at ¶¶ 12-18, 47, and intended for two different persons. *Id.* at ¶ 17 (intending to  
14 reach James Duran); *Id.* at ¶ 18 (intending to reach Jonathan Duran). These  
15 allegations undermine Defendant's contention that the calls were necessary due  
16 to an emergency medical situation. *See, e.g., Brickman v. Facebook, Inc.*, 230 F.  
17 Supp. 3d 1036, 1047 (N.D. Cal. 2017) ("Emergency calls by their statutory  
18 definition would only be allowed under limited circumstances, *for a limited  
19 time, and for limited purposes.*") (emphasis added).<sup>5</sup>

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22<sup>5</sup> Defendant attempts to recast Ms. Aguirre's allegations that she received  
23 calls from Defendant over a five-month period as evidencing that three separate  
24 sets of calls occurred—March 11-12, 2024, July 31-August 1, 2024, and then  
25 August 6, 2024 "to reach a different consumer[.]" ECF No. 28-1 at 13:28-14:5.  
26 But in doing so Defendant provides further support for Ms. Aguirre's contention  
27 that factfinding is necessary to assess the applicability of any "emergency  
28 purposes" defense here. Because if the messages Defendant delivered to Ms.  
Aguirre resulted from three distinct sets of calls intended for two different  
persons, then Defendant will need to show three separate instances of emergent  
medical situations that necessitated the calls. Alternatively, if as alleged in the  
Amended Complaint, Defendant's calls comprised a single course of conduct

1        Additionally, Ms. Aguirre also alleges that Defendant farmed the calls out  
2 to a third-party vendor to handle—rather than placing the calls directly—further  
3 calling into question Defendant’s contention that the calls were placed due to an  
4 emergency situation. ECF No. 25 at ¶ 23. There is nothing in the record  
5 evidencing the time that elapsed between when Defendant decided to place calls  
6 to Ms. Aguirre’s cellular telephone number, and when it directed its vendor to  
7 do so. Nor is there any evidence in the record as to how soon after Defendant  
8 directed its vendor to place the calls did the vendor do so. All of this information  
9 is relevant to a determination as to whether each call was necessary due to a  
10 medical emergency. *See, e.g., Dorfman v. Albertsons, LLC*, No. 1:18-cv-00094-  
11 EJL, 2018 WL 9988655, at \*5 (D. Idaho Oct. 18, 2018) (“For the purposes of  
12 the present Motion to Dismiss, the Court finds the emergency purposes  
13 exception to TCPA does not apply as a matter of law and based on Plaintiff’s  
14 allegations alone. First, there is no record for the Court to make a fact-specific  
15 determination as to whether the calls made between June 12, 2017 and July 10,  
16 2017 fell within the emergency purposes exception to TCPA liability. They  
17 likely do, but the record is silent on the issue and the burden is on the Defendant  
18 to demonstrate that dismissal is warranted on this affirmative defense.”).

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24 over a five-month period, then the months of time between the continuation of  
25 the calls forecloses any assertion that the calls were necessary due to an  
26 emergent medical situation. Either way, discovery is necessary. *See Carmouche*  
27 *v. A1 Diabetes & Med. Supply, Inc.*, 586 F. Supp. 3d 795, 801 (W.D. Tenn.  
28 2022) (“Whether the calls were truly necessary and for ‘emergency purposes’ is  
a question of fact requiring discovery into A1’s reasons and criteria for making  
such calls and leaving voice messages.”).

**B. This Court should reject Defendant's attempts to interject untested factual material that is not included within the four corners of the Amended Complaint.**

4 Because the Amended Complaint itself does not establish Defendant's  
5 "emergency purposes" defense (and in fact refutes it), Defendant repeatedly  
6 interjects untested factual assertions into its briefing. *See, e.g.*, ECF No. 28-1 at  
7 5:15-19 ("Defendant ... is a healthcare delivery organization which operates  
8 within the broader Optum network and provides and arranges for medical  
9 services for enrollees in various health insurance plans contracted with Optum  
10 affiliated entities."); *id.* at 6:1-2 ("[T]he calls were specifically placed for the  
11 purpose of confirming a doctor's requests for insurance pre-authorization for an  
12 enrollee's medical treatment."); *id.* at 6:8-9 ("Defendant obtains the consent  
13 required by the TCPA to place calls to its enrollees."); *id.* at 7:1-2 (asserting that  
14 Ms. Aguirre "inherited a phone number from Defendant's enrollee[.]"); *id.* at  
15 13:3-5 ("[T]he purpose of the calls was to reach Defendants' enrollees to  
16 confirm prior authorization approval for coverage of medical treatment at the  
17 request of the enrollee's physician."); *id.* at 15, n.4 (the calls at issue in this case  
18 "sought to confirm preauthorization for medical treatment[.]").

19        But “[i]n determining the propriety of a Rule 12(b)(6) dismissal, a court  
20 may not look beyond the complaint[.]” *Schneider v. Cal. Dep’t of Corr.*, 151  
21 F.3d 1194, 1197, n.1 (9th Cir. 1998); *see also Mairs v. Allsup LLC*, No. 19-CV-  
22 01086-NJR, 2020 WL 2745981, at \*2 (S.D. Ill. May 27, 2020) (denying motion  
23 to dismiss TCPA claim because questions of liability were fact-based and  
24 outside the four corners of the complaint.).

25 The content of the messages set forth in the Amended Complaint offer no  
26 evidence that they are of an emergent nature, and many offer no indication that  
27 they are healthcare-related at all. For instance, the March 11, 2024, July 31,  
28 2024, and August 6, 2024 messages simply reference “important information” or

1 an “approved authorization” with no context whatsoever as to what that  
2 information or authorization relates. *See* ECF No. 25 at ¶¶ 12-13, 15-16, 18. The  
3 remaining messages on March 12, 2024 and August 1, 2024 refer to a “request  
4 your doctor made,” *id.* at ¶¶ 14, 17, but otherwise provide no indication that  
5 their purpose was to “confirm[] a doctor’s requests for insurance pre-  
6 authorization for an enrollee’s medical treatment.” ECF No. 28-1 at 6:1-2.

7 In fact, the messages state the opposite—they relay that Defendant will  
8 share information with the call recipient, not that it will request confirmation  
9 from the call recipient. *See* ECF No. 25 at ¶¶ 12-18. And by requesting a call  
10 back at “any time,” Defendant’s messages did not convey any sense of urgency  
11 at all, let alone that an emergency situation existed.

12 **III. Even had Defendant established that all if its calls were to  
13 confirm prior authorization approval for coverage of medical  
14 treatment—it has not—the messages would not fall within the  
15 “emergency purposes” exception.**

16 As set forth above, there are no allegations in the Amended Complaint  
17 that the purpose of each of Defendant’s prerecorded voice messages to Ms.  
18 Aguirre’s cellular telephone was to confirm prior authorization approval for  
19 coverage of medical treatment. But even assuming *arguendo* that was the  
20 purpose of each of Defendant’s messages, the “emergency purposes” exception  
21 still would not apply because the calls were not placed to address an unforeseen  
22 medical situation that called for immediate action.

23 Last month, the Supreme Court explained that a district court must  
24 independently assess whether an agency interpretation of a statute is proper:

25 In an enforcement proceeding, a district court must independently  
26 determine for itself whether the agency’s interpretation of a statute is  
27 correct. District courts are not bound by the agency’s interpretation,  
28 but instead must determine the meaning of the law under ordinary  
principles of statutory interpretation, affording appropriate respect to  
the agency’s interpretation

1 *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 145 S. Ct. 2006,  
2 2015 (2025); *see also Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263  
3 (2024) (“[W]hen the best reading of a statute is that it delegates discretionary  
4 authority to an agency, the role of the reviewing court under the APA is, as  
5 always, to independently interpret the statute and effectuate the will of Congress  
6 subject to constitutional limits. The court fulfills that role by recognizing  
7 constitutional delegations, fixing the boundaries of the delegated authority, and  
8 ensuring the agency has engaged in reasoned decisionmaking within those  
9 boundaries.”). Pursuant to *McLaughlin*, and using rules of statutory  
10 interpretation, this Court should conclude the TCPA means what it says—that  
11 calls made to a cellular telephone that deliver a prerecorded message are  
12 excluded from the TCPA only if their purpose is to address a sudden or  
13 unforeseen situation that calls for immediate action.

14 “In construing the provisions of a statute, [courts] first look to the  
15 language of the statute to determine whether it has a plain meaning.” *Satterfield*  
16 *v. Simon & Schuster*, 569 F.3d 946, 951 (9th Cir. 2009). “The preeminent canon  
17 of statutory interpretation requires [a court] to presume that the legislature says  
18 in a statute what it means and means in a statute what it says there. Thus, [a  
19 court’s] inquiry begins with the statutory text, and ends there as well if the text  
20 is unambiguous.” *BedRoc Ltd., LLC v. U.S.*, 124 S. Ct. 1587, 1593 (2004); *see*  
21 *also U.S. v. Gonzalez-Torres*, 309 F.3d 594, 600 (9th Cir. 2002) (“Since the  
22 current statute is unambiguous, it should have been interpreted in accordance  
23 with its plain meaning.”).

24 Unless words are otherwise defined, they “will be interpreted as taking  
25 their ordinary, contemporary, common meaning.” *Sandifer v. U.S. Steel Corp.*,  
26 134 S. Ct. 870, 876 (2014). Courts find a word’s ordinary meaning by looking at  
27 what the word meant when the statute was enacted. *Jackson v. Blitt & Gaines*,  
28

1 P.C., 833 F.3d 860, 863 (7th Cir. 2016) (“We look to the meaning of the word at  
2 the time the statute was enacted, often by referring to dictionaries.”).

3 The TCPA was enacted in 1991. *See Van Patten v. Vertical Fitness Grp.,*  
4 *LLC*, 847 F.3d 1037, 1043 (9th Cir. 2017). The 1990 version of Black’s Law  
5 Dictionary defines “emergency” as:

6 [a] sudden unexpected happening; an unforeseen occurrence or  
7 condition; perplexing contingency or complication or circumstances; a  
8 sudden or unexpected occasion for action; exigency; pressing  
9 necessity. Emergency is an unforeseen combination of circumstances  
that calls for immediate action without time for full deliberation.

10 Black’s Law Dictionary 522 (6th ed. 1990).<sup>6</sup>

11 “[P]urpose” is defined as:

12 [t]hat which one sets before him to accomplish or attain; an end  
13 intention or aim, object, plan, project. Term is synonymous with ends  
14 sought, an objection to be attained, an intention.

15 *Id.* at 1236.<sup>7</sup>

16 Thus, by including the phrase “emergency purposes” in the TCPA,  
17 Congress clearly intended to exclude only those calls aimed at addressing a true  
18 unforeseen situation that required the immediate attention of the called party.  
19 *Accord Satterfield*, 569 F.3d at 953 (“If a court, employing traditional tools of  
20 statutory construction, ascertains that Congress had an intention on the precise  
21 question at issue, that intention is the law and must be given effect.”). Given the  
22 clear statutory language, a call to confirm prior authorization approval for  
23 coverage of medical treatment that requests a return call at “any time” is simply  
24 not a call made for “emergency purposes.”

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26 <sup>6</sup> <https://archive.org/details/blackslawdiction00henr/page/522/mode/2up>  
27 (last accessed July 24, 2025).

28 <sup>7</sup> <https://archive.org/details/blackslawdiction00henr/page/1236/mode/2up>  
(last accessed July 24, 2025).

1       But that is not all. In line with the unambiguous meaning of “emergency  
2 purposes” as used in the TCPA, the FCC previously rejected a request by a  
3 health benefits company to exclude under the “emergency purposes” exception  
4 non-emergency healthcare-related calls placed to cellular telephone numbers  
5 without the consent of the called party from the reach of the TCPA—even  
6 though those calls may have been of an “urgent” nature. *See* Anthem Order at ¶  
7 10 (“We also reject Anthem’s request that we exempt certain non-emergency,  
8 health care related calls that it claims are ‘urgent’ from the requirements of the  
9 TCPA … the calls Anthem describes do not appear to be made necessary by  
10 incidents of imminent danger including health risks affecting health and  
11 safety.”).

12       Given as much, even had Defendant established that all of its calls were to  
13 confirm prior authorization approval for coverage of medical treatment—it has  
14 not—the messages would not fall within the “emergency purposes” exception.

15       **IV. Adopting Defendant’s application of the “emergency purposes”  
16 exception would make the TCPA’s healthcare message  
17 exemption superfluous.**

18       Separate from the “emergency purposes” exception, the FCC created an  
19 exemption to liability under the TCPA for certain calls from healthcare  
20 providers, so long as those calls satisfy a list of strict criteria. *See* In re Rules &  
21 Regulations Implementing the Tel. Consumer Prot. Act of 1991, 30 FCC Rcd.  
22 7961, 8030–32, ¶¶ 144–148 (2015).<sup>8</sup> The healthcare message exemption  
23 specifically covers “calls for which there is exigency and that have a healthcare  
24 treatment purpose,” including “appointment and exam confirmations and  
25 reminders[.]” *Id.* at ¶ 146.

26       Assuming Defendant can establish that each of its calls to Ms. Aguirre  
27 were to confirm prior authorization approval for coverage of medical treatment

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28       <sup>8</sup> Set aside in part by *ACA Int’l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

1 for one of its enrollees, then the healthcare exemption could arguably apply to  
2 the calls. Indeed, there is little difference between confirming approval of  
3 coverage for scheduled, or a to-be-scheduled medical treatment, and confirming  
4 the appointment for the treatment itself.

5 In assessing the interplay between the “emergency purposes” exception  
6 and the healthcare message exemption in a nearly identical situation, the  
7 Western District of New York wrote:

8 “It is a commonplace of statutory construction that the specific  
9 governs the general. ... [T]his canon is particularly relevant where two  
10 provisions are interrelated and closely positioned, both in fact being  
11 parts of the same scheme.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 31, 133 S. Ct. 2247, 2266, 186 L.Ed. 2d 239 (2013)  
12 (citations and internal quotation marks omitted). Under the TCPA  
13 regulatory scheme at issue, both the emergency purposes exception  
14 and the exigent healthcare message exception could arguably apply to  
15 the subject calls, but the former exception is more general, while the  
16 latter exception (which specifically refers to “prescription notices”) is  
17 more specific. Consequently, the more-specific provision applies,  
18 which means that prescription notice calls must meet the requirements  
19 for exigent healthcare calls, discussed earlier. Additionally,  
20 interpreting the regulatory framework in the manner urged by Rite  
Aid would make the FCC’s inclusion of “prescription notices” within  
the types of calls covered by the exigent healthcare message exception  
superfluous. For these reasons, Rite Aid cannot rely on the emergency  
purpose exception to obtain dismissal under Rule 12(b)(6).

21 *Smith v. Rite Aid Corp.*, No. 17-CV-6044 CJS, 2018 WL 5828693, at \*5  
22 (W.D.N.Y. Nov. 7, 2018).

23 Similarly here, the healthcare message exemption—which specifically  
24 covers exigent calls placed to deliver appointment and exam confirmations and  
25 reminders—is more specific than the “emergency purposes” exception.  
26 Consequently, under basic principles of statutory construction, the healthcare  
27 message exemption is applicable.

28

Thus, Defendant’s calls must meet the requirements for the healthcare message exemption. Applying the “emergency purposes” exception to the calls at issue would make the FCC’s inclusion of exam confirmation and reminder calls within the types of calls covered by the healthcare message exemption superfluous.<sup>9</sup>

## Conclusion

For the foregoing reasons, Ms. Aguirre respectfully requests this Court deny Defendant's motion to dismiss.

Date: July 28, 2025

*/s/ James L. Davidson*

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<sup>9</sup> This is not to say that Defendant’s calls satisfy the healthcare message exemption—they do not. See 47 C.F.R. § 64.1200(a)(3)(v) (limiting the healthcare message exemption to one call per day). But because the purpose of the calls arguably fits under the healthcare message exemption, Defendant cannot rely on the “emergency purposes” exception. See *Smith*, 2018 WL 5828693, at \*5 n.4 (“The FCC has indicated, in a brief that it filed in another proceeding, that to the extent that there might be a healthcare-related call that falls under the emergency purpose exception but outside of the exigent healthcare call exception, parties can rely on the emergency-purposes exception on a case-by-case basis. The Court interprets this to mean that a party cannot rely on the emergency purpose exception for calls, such as those in this case, that fit under the exigent healthcare call exception.”).

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